IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 98 OF 1999

1. Special Land Acquisition
   Officer (South Goa),
   Amey Guest House,
   Davorlim Road,
   P.O. Navelim, Salcete,
   Goa 403 707.

2. Chief Engineer,
   Konkan Railway Corporation Ltd.,
   Rawnfond, Near Margao Railway
   Station, Margao, Goa. ... Appellants.

VERSUS

1. Amilcar Rosario B. Pereira,
   House No. 1405 (2),
   Majilwado, Benaulim,
   Salcete, Goa. ... Respondent.

Mr. E. Afonso, Advocate for the Appellants.

None for the Respondent.

CORAM: S.A. BOBDE &
N.A. BRITTO, JJ.

DATE: 16TH JUNE, 2004.

ORAL JUDGMENT: (PER BRITTO, J.)

This appeal is directed against the Award dated 26.2.1999 of the learned Addl. District Judge, Margao (Reference Court, for short) in LAC No.347/95.

By virtue of Notification issued under section 4(1) of the Land Acquisition Act, 1894 (Act, for short) published in Gazette dated 27.6.1991 the Government acquired an area of about 2,65,734 sq.m. of land for the purpose of construction of new B.G.

line for Konkan Railway Corporation for construction of Sleeper Plant, Diesel Loco Shed, etc. at Margao and in that was included an area of 1262 sq.m. of Chalta No.8 and 8140 sq.m. of Chalta No.9 of P.T. sheet No.263 belonging to the Applicant.

3. The L.A.O. at the stage of section 17 of the Act paid to the respondent 80% compensation at the rate of Rs.33.85 for the land of chalta no.8 and Rs.42.30 per sq.m. for the land of chalta no.9 but thereafter by award dated 1.9.94 paid to the respondent compensation at the rate of Rs.3/- per sq.m. in respect of the land of Chalta No.8 and Rs.7.50 per sq.m. for the land of Chalta No.9.

4. Dissatisfied with the said compensation, the respondent got reference made to the Reference Court. In the said reference, the respondent examined himself and relied on a Sale Deed of a plot admeasuring 6555 sq.m. and in support of the said sale deed examined the purchaser namely the partner of the firm who had purchased the said plot by Sale Deed dated 1.7.87 at the rate of Rs.115/- per sq.m. The respondent also relied upon the evidence of an expert namely AW.3 Vikas Dessai. The learned Reference Court discarded the expert's opinion of AW.3 Shri Dessai, but relied upon the sale deed dated

1.7.87 - Exh.AW.1/A and using the same as a guide fixed the compensation for the acquired land uniformly at the rate of Rs.160/- per sq.m.

5. There is no dispute that the acquired land was abutting the Margao-Quepem road on its northern side and was situated within the limits of Margao Municipal Council while the land of the Sale Deed dated 1.7.87 was also abutting the same road on its southern side and the distance between the acquired land and the plot of the sale deed - Exh.AW.1/A being 250 m. There is also no dispute that the acquired land was otherwise very close to Rajendra Prasad Stadium, ESI Hospital, etc. with all amenities such as electricity, tap water, telephone, transport, etc.

6. The first submission made by Shri Afonso, the learned counsel for the appellant is that the acquired land being a paddy field, had no scope for development. Shri Afonso in support of the said submission has placed reliance on a Division Bench decision of this Court in the case of **State of Goa v. Pedro Antonio Pereira and others** (1996 (2) Goa L.T. 346) wherein the Division Bench had observed that a paddy field could not be said to be a land with building potentiality. However, in our opinion the said observations of the Division Bench of this court

is of no application to the facts of the case at hand. It is nobody's case, not even of RW.1 who was examined on behalf of the appellants that the acquired land was a paddy field. RW.1 in fact had stated that ever since he had been to the acquired land, he had alway seen it uncultivated. The respondent had stated that the acquired land was barren land and was at road level. This fact was however sought to be controverted by RW.1 by stating that the acquired land was below the road level by one metre. However, as far as the distance of the acquired land from the said Margao-Quepem road is concerned, RW.1 who claimed to be a Civil Engineer had initially stated that the said distance was 75 metres but in his cross-examination he conceded that the said distance was of 5 metres only. In case RW.1 Furtado cannot be believed in terms of the said distance, RW.1 Furtado could not also be believed when he stated that the level of the acquired land was one metre below the road level. It therefore must be concluded that the acquired land was barren land situated adjacent to the said Margao-Quepem main road and as stated by the respondent it was a land with a 'bandh' on its three sides namely western, northern and eastern sides, with the said road abutting on its southern side.

7. The next submission of learned advocate Shri Afonso is that the learned Reference court ought to have relied upon a sale deed dated 7.3.89 which was taken into consideration by the L.A.O. while fixing the price of land and the land of the said sale deed was sold at the rate of Rs.100/- per sq.m. To support this submission Shri Afonso has placed reliance on the case of **P. Ram Reddy and others v. Land Acquisition Officer, Hyderabad** (1995) 2 S.C.C. 305. In this case the Hon'ble Supreme Court stated thus :-

" The certified copies of registered documents, though accepted as evidence of transactions recorded in such documents, the court is not bound to act upon the contents of those documents unless persons connected with such documents give evidence in court as regards them and such evidence is accepted by the court as true. But when the LAO or the Collector has made his award based on the contents of documents, as found in the registers kept under the Registration Act and produces registration copies of such documents in support of his award in court, they could be regarded acceptable as evidence by court given in support of the award unless it is shown by contra-evidence on behalf of the claimants that such documents could not have been relied upon

by the Collector or LAO in making the award. It would be so for the reason that when the LAO produces in court registration (certified) copies of those documents which he had made the basis for determining the market value, that would be only to support his award and not to establish something independent of the award. If that be so, when such documents are produced on behalf of the LAO in court, they cannot be rejected on the ground that the witnesses associated with those documents cannot be examined by the LAO, inasmuch as even without producing such documents he can rely upon the award made by him to show that he had looked into those documents and he had determined the market value on their basis. Hence, the mere fact that witnesses associated with such certified copies of documents produced as evidence in court were not examined on behalf of the LAO will not in any way affect the award of the LAO if he has determined the market value of the acquired land having perused those documents as found in the registers kept under the Registration Act or their certified copies before determining the market value of those lands on the basis of such documents (emphasis supplied) ".

8. In the case at hand, admittedly on behalf of the appellants said sale deed dated 7.3.89 was not

produced nor the award of the LAO was produced before the court. Although a copy of the award which is available can be looked into sometimes to do justice between the parties, in the absence of production of the award, the same cannot be relied in support of what is stated therein. In such a situation the observations of the Hon'ble Supreme Court in the said case of **P. Ram Reddy** (supra) would be clearly inapplicable to the case at hand.

9. The next grievance made by the learned counsel for the appellants is that the learned Reference Court was not justified in giving an increase of 10% considering that the sale deed dated 1.7.87 was four years prior to the date of acquisition and in this Shri Afonso has again placed reliance on an unreported judgment of the Division Bench of this Court in the case of Deputy Collector (Development) and LAO and another v. Rajendra Deshprabhu and others (Judgment in First Appeal No.77/97 delivered on 15.10.98) In this case this court has observed as follows :-

"The Reference Court, apart from referring to the sale deed of the said plot which was sold at the rate of Rs.300/- per sq.metre, has also referred to another sale deed in respect of the plot at Korgao

which was sold in the year 1983 at the rate of Rs.60/- per sq. metre. In fact, Korgao is situated at 4 Kms. away from Pernem and the acquired land is situated at a distance of about half a kilometre from Pernem town. Considering the fact that there is increase in land price by 10 per cent every year in Goa and the fact that the village of Korgao is situated at 4 Kms. away from Pernem, the Reference Court has increased the amount of Rs.60/- per sq.metre firstly by 18 rupees towards the 3 years increase in land price at the rate of 10% per annum and further by 80% on account of closeness of distance between Pernem town and the acquired land as compared to the land at Korgao and has arrived at the figure of Rs.141/- per sq. metre to be the market value of the acquired land. Moreover, as rightly submitted by the learned advocate for the Appellant, there is no material on record to prove annual increase of 10% in the prices of land in Goa or on account of difference in distance between Pernem and Korgao as compared to the distance between the acquired land and Pernem town. Merely because the sale at Korgao was in the year 1983 at the rate of Rs.60/- per sq. metre and the land was acquired in the year 1985, in the absence of various other factors regarding similarity of land and materials in support of the increase by specified percentage, the

calculations made by the Reference Court to arrive at the figure of Rs.141/- for enhancement of compensation cannot be sustained. In fact, we do not find sound basis to arrive at the said figure of compensation for the acquired land. Moreover, as rightly submitted by the learned advocate for the Respondent, the sale deed Exhibit 11 which was in respect of plot sold at the rate of Rs.300/- per sq. metre, discloses that the compensation at the rate of Rs.15/- was not justified and it requires to be enhanced. Undisputedly, the said rate of Rs.300/- was offered for a smaller plot and for the purpose of construction of the house by the purchaser. Considering the fact that the acquired land was bigger in area than the plot which was subject-matter of the sale deed Exhibit 11 which was sold at the rate of Rs.300/- per sq.metre and applying the test laid down by the Apex Court in various cases regarding deductions permissible while calculating the price for undeveloped plot on the basis of the price of developed land, certainly deduction of 3/4 of the amount can safely be considered as necessary for the development purposes and 1/4 thereof would be an appropriate rate of compensation for the acquired land. In our considered opinion, therefore, Rs.75/- per sq.m. would be the just and appropriate market value for the acquired land at the relevant time. In

fact, the calculation at the rate of Rs.75/- per sq. metre in respect of the acquired land finds support from the testimony of other witness of the Respondent, namely, Sadanand Gumaste. He has deposed before the Reference Court that by deed dated 7-3-1988, which was executed three years after the acquired land, he purchased a plot at the rate of Rs.100/- per sq. metre and the same plot was also situated at a locality called Poroskadem. "

10. From the above observations, it can be seen that what this court had observed was that there was no material on record to prove the increase of 10% in the price of land in Goa or on account of the difference in distance between Pernem and Korgao as compared to the distance between the acquired land and Pernem town. Merely because the sale at Korgao was in the year 1983 at the rate of Rs.60/- per sq.m. and the land was acquired in the year 1985, in the absence of various other factors regarding similarity of land and materials in support of the increase by specified percentage, the calculations made by the Reference court to arrive at the figure of Rs.141/- for enhancement of compensation could not be sustained.

11. In our opinion the said observations are

hardly of any assistance to the case of the appellants. In the case at hand the land of the sale deed has been found to be similar to the acquired land by the Reference Court and the land of the sale deed as well as the acquired land are situated in the same locality with a distance of about 250 metres only. It is otherwise common knowledge and courts take judicial notice that the land prices are always on the increase. It is also a practice adopted by the Hon'ble Supreme Court (See A.I.R. 2002 S.C. 1558) to award 10% increase per year when a sale deed which is relied upon which is prior to the date of notification under S.4(1) of the Act. This being the position, we cannot find any fault with the Reference Court in increasing the price by 10% per year.

12. Lastly, it has been submitted by Shri Afonso that there was no statement made that the acquired land was suitable for construction. It can also be said that there is no statement made by the appellants that the said land was not suitable for construction. Similar land to the sale deed was purchased and made suitable for construction. Therefore the learned Reference Court was bound to infer that the acquired land was also suitable for construction.

13. In conclusion, we may observe that no fault can be found by the exercise done by the learned Reference Court in arriving at the rate of Rs.160/- per sq.m., based on the sale deed dated 1.7.87 (Exh.AW.1/A) which was a well comparable sale instance.

14. We, therefore, find that there is no merit in this appeal and the same is hereby dismissed. Considering the facts, there will be no order as to costs.

S.A. BOBDE, J.

N.A. BRITTO, J.

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